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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,389	10/28/2003	Gary A. Barth	006.001B	6819

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EXAMINER

ARYANPOUR, MITRA

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 02/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/695,389

Applicant(s)

BARTH ET AL.

Examiner

Mitra Aryanpour

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 14-20 is/are rejected.
- 7) ☒ Claim(s) 11-13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the elastomeric bungee cord heel stirrup having both ends attached to the stirrup must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it

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pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 17-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. the application as file does not provide support for the claimed embodiment. It appears that claims 17, 19 and 20 read on the embodiment of figures 1 and 2. This embodiment does not provide support for means for releasably anchoring the tethering strap to the substratum. Claim 18 is dependent on claim 16 which appears to read on the embodiment of figures 3-6. This embodiment does not support an elastomeric bungee cord heel stirrup having both ends attached to the stirrup.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Carlini (5,938,492).

Regarding claim 1, Carlini discloses an apparatus comprising: a stirrup (strap 36) sized for capturing a lower portion of a user's foremost ambulatory appendage; an elastomeric tethering strap (leash 13) comprising an end attached to said stirrup (36) and an anchoring end (the end at plug attachment 14) connected to a substratum (upper surface) by means for releasably anchoring said tethering strap to said substratum affixed atop the ground surface (see

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column 3, lines 37-42), said strap (13) sized for elastomerically tethering the user's captured appendage to said substratum, said elastomericity including biasing favoring the return of said strap to its original shorter length and providing elastomeric constraint essentially equally in all directions during elastomeric lengthening of said strap (see figure 8), said elastomeric constraint being insufficient to prevent the batter's foot from leaving said substratum; said means for (strap loops 40 and 41) releasably anchoring said tethering strap to said substratum releasing upon the application of said elastomeric constraint sufficient to constitute substantial destabilizing hindrance, so that the user's foremost foot is allowed to stride in any direction essentially free of substantial destabilizing hindrance (see column 3, lines 36-41).

Note: The preamble, *an apparatus for modifying the stride of a baseball batter's swing motion*, does not limit the structure of the claimed device because the portion of the claim following the preamble is a self-contained description of the structure and does not depend on the preamble for completeness.

Regarding claim 2, Carlini shows said means for releasably anchoring is selected from the group consisting of hook and loop fastening system (column 4, lines 35-37).

Regarding claim 3, Carlini shows said means (40, 41) for releasably anchoring comprising one matable half of a snap attached to said substratum and the other matable half of said snap attached to said tethering strap anchoring end. It should be noted that the broadest reasonable interpretation of snap would include hook-and-loop type material.

Regarding claim 4, Carlini shows said stirrup (36) comprising a strap sized to circumnavigate at least a lower portion of a user's foremost ambulatory appendage (see figure 1).

Regarding claims 5 and 6, Carlini shows said stirrup strap (36) is long enough to capture the arch portion of the user's foot and/or the user's lowermost leg.

Regarding claim 7, Carlini shows a first terminus and a second portion including one matable part of hook-and-loop fastening system and a standard buckling system; said second portion comprising a cooperating mate-part of said fastening assembly, capable of ready capturing and uncapturing (see figures 2 and 5).

Regarding claim 8, Carlini further shows said first terminus comprises an aperture (conventional connector 37) sized to accept said stirrup strap inserted therethrough; said stirrup strap further comprising a second terminus including one matable part of hook-and-loop, and further comprising an intermediate portion including the cooperating mate-part of said hook-and-loop fastening system, said second terminus insertable through said aperture and doubling back against said intermediate portion for cooperative mating of said hook-and-loop fastening system (see figures 2 and 5).

Regarding claim 9, Carlini shows the tethering strap end attachment to said stirrup strap further comprising a second anchoring means for releasably attaching said tethering strap to said stirrup strap, selected from the group hook-and-loop fastening system (40 and 41; see figure 5; also see column 4, lines 12-39).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 10, 14, 15, 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carlini (5,938,492).

Regarding claim 10, Carlini does not disclose expressly the second anchoring means comprising a quick-release buckle system. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to include a quick-release buckle system, because Applicant has not disclosed that including a quick-release buckle system, provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either the attachment system taught by Carlini or the claimed attachment system because both attachment system perform the same function of securing the tether strap to the substratum. Therefore, it would have been an obvious matter of design choice to modify Carlini to obtain the invention as specified in claim 10.

Regarding claims 14 and 15, Carlini only shows one set of stirrup and tethering strap, but as it is evident from the disclosure a plurality of stirrups can be provided, and it would have been obvious to do so here (best seen in figure 5).

Regarding claim 16, note the rejection of claims 1, 7, 8 and 10.

***Allowable Subject Matter***

8. Claims 11-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 571-272-4405. The examiner can normally be reached on Monday - Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 571-272-4415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MA  
04 February 2005

  
**MITRA ARYANPOUR**  
**PRIMARY EXAMINER**